

Serial No.: 10/751,544

STATUS OF CLAIMS

Claims 1-23, and 35-39 are presently pending.

Applicant has hereby cancelled claims 1-7, 10-23, and 35-39 and amended allowable claims 8 and 9 to place them in independent format. Applicant has added new independent claim 40 and dependent claims 41-62 to depend on allowable claim 8. Support for the amendments to claims 8 and 9 is provided in the original claims (1, 6, 7, and 8). Support for new independent claim 40 is provided in the claims as originally filed, in particular, claims 1, 6, and 7. Support for new dependent claims 41-62 is provided in the claims as originally filed, in particular, originally filed claims 2-5, 10-22 and 35-39, respectively. Thus, Applicant submits that the new claims do not pose an issue of new matter.

REMARKS

Statutory Double Patenting Rejection Under 35 U.S.C. 101

Claims 1-7, 10-23, and 35-39 have been rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-45 of prior U.S. Patent No. 6,679,836 B2. Specifically, the Examiner stated that although any non-statutory rejection previously made by the Examiner have been obviated by filing of a terminal disclaimer by Applicant on January 11, 2005, the Examiner is now rejecting the claims based on statutory double patenting.

The Examiner also stated that claims 8 and 9 of the present invention are not rejected under statutory type double patenting.

In response, Applicant traverses the Examiner's rejection. Moreover, the rejection has been rendered moot by the cancellation of claims 1-7, 10-23, and 35-39. Applicant has hereby added new independent claim 40 that is directed to a barrier layer that is not taught or claimed in prior U.S. Patent No. 6,679,836. Applicant asserts that the new claim is not directed to the same invention as that of the claims of the prior '836 patent. In addition, Applicant has added new dependent claims 41-62 which depend on claim 8, which the Examiner deemed to be allowable.

Serial No.: 10/751,544

Rejection of the claims under 35 U.S.C. § 103(a)

Various pending claims were rejected by the Examiner as unpatentable over Belson (U.S. 6,468,203 B2), in view of one or more of Madden I (Madden et al., U.S. 6,249,076), Madden II (Madden et al., "Polypyrrole actuators: modeling and performance," Proceedings of SPIE, Bar-Cohen ed., Vol. 4329, pages 72-83, March 5-8, 2001), Shan (U.S. 5,957,833), Takayama et al. (U.S. 5,624,380), and/or Wilk (U.S. 5,535,759).

The Examiner stated that claims 8 and 9 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

In response, Applicant states that the rejection is moot in light of the cancellation of claims 1-7, 10-23, and 35-39. Applicant has rewritten claims 7 and 9 into independent format and also added new claims 41-62 that depend on allowed claim 8. Applicant has also added new independent claim 40 directed to an apparatus having an active member portion, a counter-electrode portion and a region comprising an electrolyte that are disposed between a substrate layer and a barrier layer. Applicant asserts that none of the references teaches all of the structural limitations of claim 40; namely that the active member portion, a counter-electrode portion and a region comprising an electrolyte are disposed between a substrate layer and a barrier layer.

In light of the foregoing remarks, it is believed that the rejections and objections of record have been obviated, and allowance of this application is respectfully solicited. If a telephone conference would facilitate examination of this application in any way, the examiner is invited to contact applicants' attorney at (908) 518-7700. The Examiner's consideration of this matter is gratefully acknowledged. The Commissioner is authorized to charge any

Serial No.: 10/751,544

fees deemed necessary in connection with the above-application to Deposit Account No.
50-1047.

Respectfully submitted,

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